

IN THE UNITED STATES DISTRICT COURT FOR THE  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

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ROSEMARIE SYLVESTRO,

Plaintiff,

v.

LEVITON MANUFACTURING, INC.,

Defendant.

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Civil Action No. EP08CA-0168-KC

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY \_\_\_\_\_  
DEPUTY

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

**A. Parties**

1. Plaintiff is Rosemarie Sylvestro, an individual who resides in El Paso County, Texas.

2. Defendant is Leviton Manufacturing Co., Inc., and may be served with process through its attorney of record, Mark Dore, Mounce, Green, Myers, Safi, Paxson, & Galatzan, P.C., P.O. Box 1977, El Paso, Texas 79950 or wherever he may be found.

**B. Jurisdiction**

3. The court has jurisdiction over the lawsuit because the action arises under the Family and Medical Leave Act (FMLA), 29 U.S.C. §2601 et seq. The plaintiff was employed as a Rework Operator with Defendant, a foreign for profit corporation doing business in the State of Texas.

**C. Venue**

4. Venue in El Paso County is proper in this cause because all or substantially all of the actions in actions in dispute occurred in El Paso.

**D. Conditions Precedent**

5. All conditions precedent have been performed or have occurred.

**E. FMLA**

6. Plaintiff is an eligible employee within the meaning of the FMLA. Plaintiff was employed by Defendant for at least 12 months and for at least 1,250 hours of service during the previous 12-month period.

7. Defendant is an employer within the meaning of the FMLA. Defendant is engaged in commerce or in an industry or activity affecting commerce and employs 50 or more employees for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year.

8. Plaintiff was entitled to 12 work weeks of intermittent leave for a 12 month period due to her medical condition of spinal stenosis that made Plaintiff unable to perform the functions of her position on occasion.

9. Plaintiff informed Defendant of her need for intermittent leave and gave such notice as was practicable under the circumstances before the date leave was to begin.

10. Plaintiff also provided the Certification of Health Care Provider required by Defendant, and should have been approved for FMLA leave. Defendant considered Plaintiff's FMLA leave to terminate Plaintiff purportedly for excessive absenteeism on or about August 28, 2007.

11. In doing so, Defendant intentionally interfered with Plaintiff's rights provided under the FMLA. Furthermore, the Defendant intentionally discriminated against

Plaintiff in violation of the FMLA by firing her shortly after she submitted her request for intermittent leave.

**F. Damages**

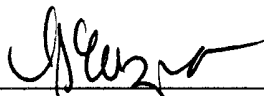
14. As a direct and proximate result of Defendant's conduct, plaintiff suffered the following injuries and damages.

- a. All reasonable and necessary attorney's fees incurred by or on behalf of Plaintiff, including all fees necessary in the event of an appeal of this cause;
- b. All reasonable and necessary costs incurred in pursuit of this suit;
- c. Emotional distress in the past;
- d. Emotional distress in the future;
- e. Loss of earnings in the past;
- f. Loss of earning capacity which will, in all probability, be incurred in the future; and
- g. Loss of benefits.

**Prayer**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff ROSEMARIE SYLVESTRO respectfully requests the Court that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; attorney's fees, exemplary damages, together with pre-judgment and post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

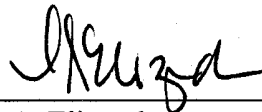
Respectfully submitted,



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State Bar No. 00787428  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I certify that on June 13, 2008, a true and correct copy of the foregoing document was sent via certified mail, return receipt requested to Attorney for Defendant, Mark Dore, Mounce, Green, Myers, Safi, Paxson, & Galatzan, P.C., P.O. Box 1977, El Paso, Texas 79950.



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Lisa A. Elizondo